

a whole; that the renewal application and fee are received not more than twenty-eight or less than twenty-seven years after December 31 of the calendar year in which all of the works were first published; and that the renewal application identifies each work separately, including the periodical containing it and its date of first publication.

Corrections and Amplifications. Another unsatisfactory aspect of the present law is the lack of any provision for correcting or amplifying the information given in a completed registration. Subsection (d) of section 408 would remedy this by authorizing the Register to establish “formal procedures for the filing of an application for supplementary registration,” in order to correct an error or amplify the information in a copyright registration. The “error” to be corrected under subsection (d) is an error by the applicant that the Copyright Office could not have been expected to note during its examination of the claim; where the error in a registration is the result of the Copyright Office’s own mistake or oversight, the Office can make the correction on its own initiative and without recourse to the “supplementary registration” procedure.

Under subsection (d), a supplementary registration is subject to payment of a separate fee and would be maintained as an independent record, separate and apart from the record of the earlier registration it is intended to supplement. However, it would be required to identify clearly “the registration to be corrected or amplified” so that the two registrations could be tied together by appropriate means in the Copyright Office records. The original registration would not be expunged or cancelled; as stated in the subsection: “The information contained in a supplementary registration augments but does not supersede that contained in the earlier registration.”

Published Edition of Previously Registered Work. The present statute requires that, where a work is registered in unpublished form, it must be registered again when it is published, whether or not the published edition contains any new copyrightable material. Under the bill there would be no need to make a second registration for the published edition unless it contains sufficient added material to be considered a “derivative work” or “compilation” under section 103.

On the other hand, there will be a number of cases where the copyright owner, although not required to do so, would like to have registration made for the published edition of the work, especially since the owner will still be obliged to deposit copies or phonorecords of it in the Copyright Office under section 407. From the point of view of the public there are advantages in allowing the owner to do so, since registration for the published edition will put on record the facts about the work in the form in which it is actually distributed to the public. Accordingly, section 408(e), which is intended to accomplish this result, makes an exception to the general rule against allowing more than one registration for the same work.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-307 substituted “At any time during the subsistence of the first term of copyright in any published or unpublished work in which the copyright was secured before January 1, 1978, and during the subsistence of any copyright secured on or after that date,” for “At any time during the subsistence of copyright in any published or unpublished work.”

1988—Subsec. (a). Pub. L. 100-568, §9(a)(1), substituted “Such” for “Subject to the provisions of section 405(a), such”.

Subsec. (c)(2). Pub. L. 100-568, §9(a)(2), substituted “the following conditions:” for “all of the following conditions—”, struck out subpar. (A) which read “if each of the works as first published bore a separate copyright notice, and the name of the owner of copyright in the work, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner was the same in each

notice; and”, and redesignated subpars. (B) and (C) as (A) and (B), respectively.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-307 effective June 26, 1992, but applicable only to copyrights secured between January 1, 1964, and December 31, 1977, and not affecting court proceedings pending on June 26, 1992, with copyrights secured before January 1, 1964, governed by section 304(a) of this title as in effect on the day before June 26, 1992, except each reference to forty-seven years in such provisions deemed to be 67 years, see section 102(g) of Pub. L. 102-307, as amended, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-568 effective Mar. 1, 1989, with any cause of action arising under this title before such date being governed by provisions in effect when cause of action arose, see section 13 of Pub. L. 100-568, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 302, 405, 601, 704, 708 of this title; title 2 section 170; title 28 section 4001.

§ 409. Application for copyright registration

The application for copyright registration shall be made on a form prescribed by the Register of Copyrights and shall include—

(1) the name and address of the copyright claimant;

(2) in the case of a work other than an anonymous or pseudonymous work, the name and nationality or domicile of the author or authors, and, if one or more of the authors is dead, the dates of their deaths;

(3) if the work is anonymous or pseudonymous, the nationality or domicile of the author or authors;

(4) in the case of a work made for hire, a statement to this effect;

(5) if the copyright claimant is not the author, a brief statement of how the claimant obtained ownership of the copyright;

(6) the title of the work, together with any previous or alternative titles under which the work can be identified;

(7) the year in which creation of the work was completed;

(8) if the work has been published, the date and nation of its first publication;

(9) in the case of a compilation or derivative work, an identification of any preexisting work or works that it is based on or incorporates, and a brief, general statement of the additional material covered by the copyright claim being registered;

(10) in the case of a published work containing material of which copies are required by section 601 to be manufactured in the United States, the names of the persons or organizations who performed the processes specified by subsection (c) of section 601 with respect to that material, and the places where those processes were performed; and

(11) any other information regarded by the Register of Copyrights as bearing upon the preparation or identification of the work or the existence, ownership, or duration of the copyright.

If an application is submitted for the renewed and extended term provided for in section

304(a)(3)(A) and an original term registration has not been made, the Register may request information with respect to the existence, ownership, or duration of the copyright for the original term.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2582; Pub. L. 102-307, title I, § 102(b)(1), June 26, 1992, 106 Stat. 266.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

The various clauses of section 409, which specify the information to be included in an application for copyright registration, are intended to give the Register of Copyrights authority to elicit all of the information needed to examine the application and to make a meaningful record of registration. The list of enumerated items was not exhaustive; under the last clause of the section the application may also include "any other information regarded by the Register of Copyrights as bearing upon the preparation or identification of the work or the existence, ownership, or duration of the copyright."

Among the enumerated items there are several that are not now included in the Copyright Office's application forms, but will become significant under the life-plus-50 term and other provisions of the bill. Clause (5), reflecting the increased importance of the interrelationship between registration of copyright claims and recordation of transfers of ownership, requires a statement of how a claimant who is not the author acquired ownership of the copyright. Clause (9) requires that, "in the case of a compilation or derivative work" the application include "an identification of any pre-existing work or works that it is based on or incorporates, and a brief, general statement of the additional material covered by the copyright claim being registered." It is intended that, under this requirement, the application covering a collection such as a song-book or hymnal would clearly reveal any works in the collection that are in the public domain, and the copyright status of all other previously-published compositions. This information will be readily available in the Copyright Office.

The catch-all clause at the end of the section will enable the Register to obtain more specialized information, such as that bearing on whether the work contains material that is a "work of the United States Government." In the case of works subject to the manufacturing requirement, the application must also include information about the manufacture of the copies.

AMENDMENTS

1992—Pub. L. 102-307 inserted at end "If an application is submitted for the renewed and extended term provided for in section 304(a)(3)(A) and an original term registration has not been made, the Register may request information with respect to the existence, ownership, or duration of the copyright for the original term."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-307 effective June 26, 1992, but applicable only to copyrights secured between January 1, 1964, and December 31, 1977, and not affecting court proceedings pending on June 26, 1992, with copyrights secured before January 1, 1964, governed by section 304(a) of this title as in effect on the day before June 26, 1992, except each reference to forty-seven years in such provisions deemed to be 67 years, see section 102(g) of Pub. L. 102-307, as amended, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 408, 506 of this title.

§ 410. Registration of claim and issuance of certificate

(a) When, after examination, the Register of Copyrights determines that, in accordance with the provisions of this title, the material deposited constitutes copyrightable subject matter and that the other legal and formal requirements of this title have been met, the Register shall register the claim and issue to the applicant a certificate of registration under the seal of the Copyright Office. The certificate shall contain the information given in the application, together with the number and effective date of the registration.

(b) In any case in which the Register of Copyrights determines that, in accordance with the provisions of this title, the material deposited does not constitute copyrightable subject matter or that the claim is invalid for any other reason, the Register shall refuse registration and shall notify the applicant in writing of the reasons for such refusal.

(c) In any judicial proceedings the certificate of a registration made before or within five years after first publication of the work shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate. The evidentiary weight to be accorded the certificate of a registration made thereafter shall be within the discretion of the court.

(d) The effective date of a copyright registration is the day on which an application, deposit, and fee, which are later determined by the Register of Copyrights or by a court of competent jurisdiction to be acceptable for registration, have all been received in the Copyright Office.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2582.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

The first two subsections of section 410 set forth the two basic duties of the Register of Copyrights with respect to copyright registration: (1) to register the claim and issue a certificate if the Register determines that "the material deposited constitutes copyrightable subject matter and that the other legal and formal requirements of this title have been met," and (2) to refuse registration and notify the applicant if the Register determines that "the material deposited does not constitute copyrightable subject matter or that the claim is invalid for any other reason."

Subsection (c) deals with the probative effect of a certificate of registration issued by the Register under subsection (a). Under its provisions, a certificate is required to be given prima facie weight in any judicial proceedings if the registration it covers was made "before or within five years after first publication of the work"; thereafter the court is given discretion to decide what evidentiary weight the certificate should be accorded. This five-year period is based on a recognition that the longer the lapse of time between publication and registration the less likely to be reliable are the facts stated in the certificate.

Under section 410(c), a certificate is to "constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate." The principle that a certificate represents prima facie evidence of copyright validity has been established in a long line of court decisions, and it is a sound one. It is true that, unlike a patent claim, a claim to copyright is not examined for basic validity before a certificate is issued.